IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

WP(C).No. 17300 of 2007(H)

PETITIONER:
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1. SHEJEER K.M., LPSA,
NORTH PONJASSERY L.P.SCHOOL, PONJASSERY P.O.,
PIN- 683 547, PERUMBAVOOR.

2. NISHAMOL E.M., LPSA,
NORTH PONJASSERY L.P.SCHOOL,
PONJASSERY P.O., PIN- 683 547, PERUMBAVOOR.

BY ADV. SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI

RESPONDENTS:
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1. THE SUB INSPECTOR OF POLICE,
PERUMBAVOOR.

2. THE ASSISTANT EDUCATIONAL OFFICER,
PERUMBAVOOR.

3. SHRI A.P.KUNJUMOHAMMED, SECRETARY,
NORTH PONJASSERY MUSLIM CULTURLA ASSOCIATION
AND MANAGER, NORTH PONJASSERY L.P.SCHOOL,
PONJASSERY P.O., PRUMBAVOOR- 683 547.

4. SHRI P.A.ASHRAF,
S/O.LATE T.P.ABOOBACKER HAJI, ABDULLA ESTATE,
PONJASSERY P.O., PERUMBAVOOR - 683547.

5. SHRI A.A.UMMER,
S/O.LATE A.M.AHAMED, ELAVUMKUDY HOUSE,
PONJASSERY P.O., PERUMBAVOOR- 683547.

BY ADV. SRI.GEORGE POONTHOTTAM
SRI.V.A.MUHAMMED
SRI.K.E.HAMZA
GOVT.PLEADER SRI.P.A.SALIM.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO. 17300 OF 2007

APPENDIX

EXHIBIT P1: COPY OF ORDER NO.K.DIS.9134/1975/04 DATED 30.4.1975 ISSUED BY THE REGIONAL DEPUTY DIRECTOR OF PUBLIC INSTRUCTION, ERNAKULAM.

EXHIBIT P2: COPY OF ORDER OF APPOINTMENT OF THE FIRST petitioner AND COVERING LETTER DATED 31.5.2007 OF THE THIRD RESPONDENT.

EXHIBIT P3: COPY OF REPORT SUBMITTED BY THE TEACHER-IN-CHARGE TO THE 2ND RESPONDENT DATED 1.6.07.

EXHIBIT P5: COPY OF REQUEST SUBMITTED BY THE 3RD RESPONDENT TO THE IST RESPONDENT DATED 31.5.07.

RESPONDENTS' EXHIBITS:

EXHIBIT R4(a): COPY OF MEMORANDUM AND ARTICLE OF ASSOCIATION OF THE NORTH PONJASSARY MUSLIM CULTURAL ASSOCAITON.

EXHIBIT R4(b): COPY OF MEMORANDUM OF O.P.97/1999 PENDING BEFORE the ADDITOINAL SUB COURT NORTH PARAVOOR.

EXHIBIT R4(c): COPY OF OBJECTION FILED BY THE FOURTH RESPONDENT IN O.P.97/1999.

EXHIBIT R4(d): COPY OF MINUTES OF THE MEEETING OF THE EXECUTIVE COMMITTEE OF THE ASSOCIATION DATED 9.2.2003.

EXHIBIT R4(e): COPY OF ORDER OF EO PERUMPAVOOR DATED 12.8.2004.

EXHIBIT R4(f): COPY OF APPOINTMENT ORDER OF SREEJA .S.MOHAN AS LPSA IN THE SCHOOL DATED 1.6.2007.

EXHIBIT R4(g): COPY OF APPOINTMENT ORDER OF JYOTHI V.VIJAYAN AS LPSA IN THE SCHOOL DATED 1.6.2007.

EXHIBIT R4(h): COPY OF LETTERS INTIMATING THE TEACHER IN CHARGE REGARDING THE APPOINTMENT OF SREEJA.S.MOHAN AS LPSA DATED 1.6.2007.

EXHIBIT R4(i): COPY OF LETTER INTIMATING THE TEAFCHER IN CHARGE REGARDING THE APPOINTMENT OF JYOTHI.V.VIJAYAN AS LPSA DATED 1.6.2007.

EXHIBIT R4(j): COPY OF ENTRY SHOWING THAT SMT.SREEJA.S.MOHAN HAS PARTIFCIPATED IN THE “VIDYARAMBHA SAMGAMM” ON 1.6.2007.

EXHIBIT R4(k): COPY OF THE ENTRY SHOWIGN THAT SMT.JYOTHI.V.VIJAYAN HAS PARTICIPATED IN THE “VIDYARAMBHA SAMGAMM' ON 1.6.2007.

EXHIBIT R4(l): COPY OF COMPLAINT FILED BY THE NEW TEACHERS APPOINTED BY THE 4TH RESPONDENT TO THE AEO DATED 4.6.2007.

/TRUE COPY/

PA TO JUDGE

P.R.RAMAN & K.HEMA, JJ.

W.P.(C).NO.17300 OF 2007

Dated this the 19th day of June, 2007

JUDGMENT

Raman, J.

The petitioners are stated to be teachers appointed in the North Ponjassery L.P.S, as per Exhibits P2 and P3 by one Kunjumohammed styled himself as the Manager of the said School, who is arrayed as third respondent in the Writ Petition. Respondents 4 and 5 are stated to be the sons of the former Secretary and the former President of the Association who allegedly physically prevented the petitioners from entering the school. In spite of complaint made to the police, no effective protection was afforded and hence they filed this Writ Petition.

2. This Court by order dated 6.6.2007 directed respondents 1 and 2 to give necessary protection to the petitioners in case there is any physical obstruction to the petitioners to work in the school. Notices were also ordered and pursuant to the notice served, respondents 4 and 5 entered appearance.

3. A counter affidavit is filed for and on behalf of respondents 4 and 5 wherein it is averred that the North Ponjassery School belongs

to North Ponjassary Muslim Cultural Association and being the Secretary, the fourth respondent is the Manager of the School. The fifth respondent is a member of the association and the third respondent is stated to have no interest on the association. It is also stated that O.P.No.97 of 1999 was filed before the Additional Sub Court, North Paravoor against one T.P.Aboobacker Haji, the father of the fourth respondent, for a direction to conduct the election through court and also for the administration of the School by a new Committee. No order was passed thereon and the suit is still pending. In the meanwhile, the father of the fourth respondent, T.P.Aboobacker Haji, passed away and subsequently, the executive committee of the Society elected the fourth respondent as the Secretary of the Society and as such he is entitled to be the Manager of the School. According to him, he has appointed two other teachers and a copy of the appointment orders are Exhibits R4(f) and R4(g) produced along with the counter affidavit. However, in view of the dispute, they could not take charge. Exhibit R4(e) is a copy of the order sent by the Assistant Educational Officer addressed to the fourth respondent wherein it is stated that in view of the pendency of the dispute pending before the civil court, the Assistant Educational Officer could not take a decision in the application submitted by the fourth respondent. From the said letter

it can be seen that the dispute between respondents 3 and 4 who have raised rival claims for the post of Manager could not be settled by the Assistant Educational Officer, in view of the pendency of a civil case filed by the third respondent. It is also submitted by learned counsel for the fourth respondent that the matter has since been taken before the Director of Public Instruction. It is true that in the absence of any order, deciding as to who should be recognised as the Manager initially by the Assistant Educational Officer, there could not be any effective appeal to the Director of Public Instruction. Even though the third respondent has not filed any counter affidavit and seek further time, in our view, it is not necessary to wait for the said counter affidavit, since we are not entering a decision on the merits of the contentions raised between the parties regarding their rival claims to the post of Manager.

4. Having considered the rival submissions between the parties, we dispose of the Writ Petition as follows: Since no interim orders are passed by the civil court in the suit now pending before the District Court, it is necessary that the educational authorities themselves should take a decision provisionally subject to any decision that may be taken by the civil court in the due course. Accordingly, we direct the Deputy Director of Education, Ernakulam, (who is suo motu impleaded as a respondent in the Writ Petition for

the limited purpose of issuing this direction) to take a decision after hearing respondents 3 and 4 as to who should be provisionally recognised as the Manager of the School until a decision is rendered by the civil court. Such decision shall be taken within a period of two weeks. Either party to the Writ Petition may serve a copy of this judgment before the Deputy Director of Education, Ernakulam for information and compliance. It is open to the parties to submit their respective claims before the Deputy Director of Education, Ernakulam. Since this Court has already passed an interim order, that will continue. However, it is made clear that if the petitioners are working based on the interim protection granted by this Court, it will not confer any better right on him to agitate his claim and the Deputy Director of Education will render his decision untrammelled by the fact of granting police protection by this Court, since this Court has not entered any finding on the merits of the contentions raised by the parties.

P.R.RAMAN, JUDGE

K.HEMA, JUDGE

vgs.